

1

2

3

4

5

6

7

8

UNITED STATES DISTRICT COURT

9

SOUTHERN DISTRICT OF CALIFORNIA

10

11 PAUL CODY, ) Civil No. 07-1199-BEN(LSP)  
12 Plaintiff, )  
13 v. ) NOTICE AND ORDER FOR EARLY  
14 JIHAN, INC. et al., ) NEUTRAL EVALUATION CONFERENCE  
15 Defendants. )  
16

---

17 IT IS HEREBY ORDERED that an Early Neutral Evaluation of your  
18 case will be held on October 30, 2007 at 2:00 PM before United  
19 States Magistrate Judge Leo S. Papas, United States Courthouse,  
20 Courtroom G, First Floor, 940 Front Street, San Diego, California.

21 Pursuant to Rule 16.1(c) of the Local Rules of the United  
22 States District Court for the Southern District of California, both  
23 counsel and the parties who have full and unlimited authority<sup>1</sup> to  
24

---

1 "Full authority to settle" means that the individuals at the settlement conference must be authorized to fully explore settlement options and to agree at that time to any settlement terms acceptable to the parties. Heileman Brewing Co., Inc. v. Joseph Oat Corp., 871 F.2d 648 (7th Cir. 1989). The person needs to have "unfettered discretion and authority" to change the settlement position of a party. Pitman v. Brinker Intl., Inc., 216 F.R.D. 481, 485-486 (D. Ariz. 2003). The purpose of requiring a person with unlimited settlement authority to attend the conference includes that the person's view of the case may be altered during the face to face conference. Id. at 486. A limited or a sum certain of authority

1 negotiate and enter into a binding settlement shall appear in person  
2 at the conference and shall be prepared to discuss the claims,  
3 defenses and damages.

4 Unless there are **extraordinary circumstances**, persons  
5 required to attend the conference pursuant to this Order shall not  
6 be excused from personal attendance. Requests for excuse from  
7 attendance for **extraordinary circumstances** shall be made in writing  
8 at least 48 hours prior to the conference. Where the suit involves  
9 the United States or one of its agencies, only counsel for the  
10 United States with full settlement authority need appear. All  
11 conference discussions will be informal, off the record, privileged  
12 and confidential.

13 The parties may, but are not required to, submit a short  
14 Early Neutral Evaluation Conference Statement about the case on a  
15 confidential basis.

16 In the event the case does not settle at the Early Neutral  
17 Evaluation Conference, the parties shall also be prepared to discuss  
18 the following matters at the conclusion of the conference.

19 1. Any anticipated objections under Federal Rule of Civil  
20 Procedure 26(a)(1)(E) to the initial disclosure provisions of  
21 Federal Rule of Civil Procedure 26(a)(1)(A-D);

22 2. The scheduling of the Federal Rule of Civil Procedure  
23 26(f) conference;

24 3. The date of initial disclosure and the date for lodging  
25 the discovery plan following the Rule 26(f) conference; and,

26 4. The scheduling of a Case Management Conference pursuant

27  
28 is not adequate. Nick v. Morgan's Foods, Inc., 270 F.3d 590 (8th Cir.  
2001).

1 to Federal Rule of Civil Procedure 16(b).

2 The Court will issue an appropriate order addressing these  
3 issues and setting dates as appropriate.

4 Questions regarding this case may be directed to the  
5 Magistrate Judge's research attorney at (619) 557-6384.

6 Based upon the Court's familiarity with these matters and in  
7 the interest of promoting the just, efficient and economical  
8 determination of this action, the Court issues the following orders  
9 at this time:

10 1. All formal discovery shall be stayed in this case until  
11 the completion of the Early Neutral Evaluation Conference set  
12 herein;

13 2. Twenty-one (21) days prior to the Early Neutral  
14 Evaluation Conference, Plaintiff's counsel shall lodge with  
15 Magistrate Judge Papas' chambers and serve on opposing counsel a  
16 statement, not in excess of two pages, including:

17 (a) An itemized list of the specific issues on the subject  
18 premises which are the basis of the claimed violations  
19 under the Americans with Disabilities Act;

20 (b) A statement of the amount and category of damages  
21 claimed by Plaintiff in this action;

22 (c) The amount claimed for attorney's fees and costs; and,

23 (d) The Plaintiff's demand for settlement of the case in its  
24 entirety.

25 3. After service of Plaintiff's statement, or whether or  
26 not Plaintiff's statement is served, and at least fourteen (14) days  
27 prior to the Early Neutral Evaluation Conference, counsel for the  
28 parties as well as property managers of commercial locations shall

1       **meet and confer in person at the subject premises** regarding  
2 settlement of (1) alleged premise violations, and (2) damages, costs  
3 and attorney fee claims. Plaintiff's counsel shall be responsible  
4 to make arrangements for the conference. **The meet and confer**  
5 **obligation cannot be satisfied by telephone or by the exchange of**  
6 **letters.**

7           4. Seven (7) days prior to the Early Neutral Evaluation  
8 Conference, counsel shall lodge with Magistrate Judge Papas'  
9 chambers a joint statement advising the Court of the status of  
10 settlement negotiations and setting forth all issues in dispute,  
11 including property issues, Plaintiff's alleged damages, and the  
12 claim for attorney's fees and costs, along with a description of any  
13 settlement demands and/or offers exchanged. If for any reason  
14 counsel can not comply with the meet and confer and joint statement  
15 requirements set forth in this order, counsel shall contact the  
16 chambers of Magistrate Judge Papas at least two court days before  
17 the Early Neutral Evaluation Conference, to explain the reasons  
18 therefore. Monetary sanctions shall be imposed for failure to  
19 comply with this order.

20           5. At the Early Neutral Evaluation Conference, Plaintiff's  
21 counsel shall provide documentation to the Court for *in camera*  
22 review supporting the amount of attorney's fees and costs claimed.

23           6. **Plaintiff's counsel shall notify all Defendants of the**

24

25

26

27

28

date and time of the Early Neutral Evaluation Conference.

DATED: September 19, 2007

  
Hon. Leo S. Papas  
U.S. Magistrate Judge